UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/46/348
30 August 1991

ORIGINAL: ENGLISH

Forty-sixth session
Item 135 of the provisional agenda*

ADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION ON CONSULAR RELATIONS

Report of the Secretary-General

CONTENTS

		Page
I.	INTRODUCTION	3
II.	REPLIES RECEIVED FROM MEMBER STATES AND OTHER STATES PARTIES TO THE CONVENTION	4
	Austria	4
	Bolivia	5
	Ecuador	6
	Jamaica	6
	Luxembourg	9
	Mexico	10
	Mongolia	12
	Norway	13

* A/46/150.

CONTENTS (continued)

Page

Romania 14

Switzerland 15

Union of Soviet Socialist Republics 17

Uruguay 18

Zimbabwe 19

I. INTRODUCTION

1. On 28 November 1990, the General Assembly adopted resolution 45/47 entitled "Additional protocol on consular functions to the Vienna Convention on Consular Relations", paragraphs 1 to 4 of which read as follows:

> "The General Assembly,
>
> ...
>
> "1. Reaffirms its conviction that the Vienna Convention on Consular Relations 1/ has played, for over two decades, and will continue to play an essential role in promoting cooperation and understanding among States, by creating favourable conditions for the activities of consular posts and for the conduct of consular relations;
>
> "2. Takes note with interest of the proposal concerning the elaboration of an additional protocol on consular functions to the Vienna Convention on Consular Relations; 2/
>
> "3. Requests the Secretary-General to seek the views of Member States and of other States parties to the Convention on the proposal and on the procedure to be followed in considering this question, and to submit a report thereon to the General Assembly at its forty-sixth session;
>
> "4. Decides to include in the provisional agenda of its forty-sixth session the item entitled 'Additional protocol on consular functions to the Vienna Convention on Consular Relations'."

1/ United Nations, Treaty Series, vol. 596, No. 8638.

2/ See A/45/141, annex.

2. By a note dated 21 February 1991, the Secretary-General invited the Governments of Member States as well as of other States parties to the Convention to submit the replies referred to in paragraph 3 of resolution 45/47.

3. As at 20 August 1991, replies had been received from Austria, Bolivia, Ecuador, Jamaica, Luxembourg (on behalf of the Twelve States members of the European Community), Mexico, Mongolia, Norway (on behalf of the Nordic countries), Romania, Switzerland, the Union of Soviet Socialist Republics, Uruguay and Zimbabwe.

4. Any further replies will be reproduced in addenda to the present report.

II. REPLIES RECEIVED FROM MEMBER STATES AND OTHER STATES PARTIES TO THE CONVENTION

AUSTRIA

[Original: English]

[14 August 1991]

1. The Vienna Convention on Consular Relations of 24 April 1963 is one of the most important international instruments emanating from the work of the International Law Commission. This Convention has codified international consular law and at the same time progressively developed it. It thus corresponds to the codification of international diplomatic law in the Vienna Convention on Diplomatic Relations 1961.

2. While the Convention has proven its value over the years, an analysis of its rules, however, shows that the Convention mainly concentrates on consular privileges and immunities while lacking detailed rules relating to consular functions. This is undoubtedly due to the fact that a compromise between two different approaches had to be found.

3. On the one hand, during the preparation of the Convention, different reasons were advanced in support of a very general definition of consular functions which refers to international law and the laws of the receiving States. On the other hand, arguments in favour of a detailed enumeration of consular functions were put forth. During the deliberations of the United Nations Conference on Consular Relations in Vienna in 1963, the Austrian delegation stressed that the Conference would be "delinquent in its duty" of codifying international law of consular relations in pursuance of Article 13 of the Charter of the United Nations if it merely adopted a definition of consular functions which referred back to international law and the laws of the receiving States.

4. The system chosen in article 5 of the Vienna Convention - a non-exhaustive enumeration on the most important consular functions recognized by international law by way of example - was a compromise formula which is characterized by a certain lack of precision. For that very reason, a number of countries have tried to fill this lacuna by bilateral agreements aimed at the laying down of more detailed rules in relation to consular functions. Such agreements, however, differ in content and are only in force between a limited number of countries. This situation warrants a multilateral approach with the aim of arriving at a universally applicable, more precise definition of consular functions.

5. For that reason, Austria and Czechoslovakia have taken a joint initiative with the aim of supplementing and specifying the provisions of the Vienna Convention on Consular Relations by an additional protocol thereto dealing with consular functions. Austria and Czechoslovakia have decided to bring this proposal before the General Assembly, as it is one of the essential tasks of this Assembly to initiate studies and to make recommendations to Member

States in the field of international law, thereby contributing to its development and codification.

6. At the bilateral level, Austria and Czechoslovakia have laid down detailed rules on consular functions, in a bilateral agreement supplementing article 5 of the Vienna Convention on Consular Relations. It defines consular functions in fields such as the issuance of travel documents, the performance of functions of a notary and civil registrar and other similar functions, the protection of the right of minors and other persons requiring trusteeship, and rights of supervision and inspection relating to vessels and aircraft.

7. The joint Austrian-Czechoslovak proposal is guided by the principle of developing specific rules on consular functions without, however, trying to regulate each and every detail. Customary international law would continue to govern questions that are not expressly dealt with by the instrument.

8. Austria holds the view that a more detailed enumeration of consular functions as proposed would also provide guidance in determining the effects of other provisions of the Convention, such as article 43, which governs the immunity of members of a consulate from the receiving State's jurisdiction "in respect of the acts performed in the exercise of consular functions".

9. Austria is convinced that a more detailed consideration of these questions would be highly useful to the international community.

10. In the light of the remarks and comments of the Member States, as well as of other States parties to the Vienna Convention on Consular Relations, the General Assembly at its forty-sixth session should consider establishing a working group of the Sixth Committee to deal with this issue.

BOLIVIA

[Original: Spanish]

[5 July 1991]

1. The Government of Bolivia considers that the proposal presented by Austria and Czechoslovakia concerning the elaboration of an additional protocol on consular functions to the 1963 Vienna Convention on Consular Relations, which seeks to supplement the provisions of the above Convention by elaborating precise and concrete regulations to fill the lacuna that existed in this area, is a sound one since it contributes to the strengthening of consular law and to the consolidation and codification of international law. The Government of Bolivia therefore wishes to congratulate the delegations of Austria and Czechoslovakia on having elaborated this draft protocol and submitted it for the consideration of the States Members of the United Nations.

2. The Government of Bolivia has considered the text of the above-mentioned additonal protocol and has concluded that its provisions are adequately

reflected in the Consular Regulations of Bolivia, which have been in force since 2 August 1989.

3. The Government of Bolivia therefore wishes to express its agreement with the text of the draft additional protocol.

4. With respect to the procedure to be followed in considering this item, the Government of Bolivia recommends the establishment of an ad hoc working group, which would compare the legislation of all States Members of the United Nations in respect of consular matters and submit to the Secretary-General a report containing its observations on the text of the additional protocol and its opinion as to whether the text adequately responds to present-day consular relations.

ECUADOR

[Original: Spanish]

[20 August 1991]

With respect to the additional protocol on consular functions to the Vienna Convention on Consular Relations, and to the procedure for considering the aforesaid protocol, I am pleased to inform you that the Government of Ecuador feels that the draft additional protocol contains important provisions which broaden and elaborate on the norms established in the 1963 Vienna Convention. In consequence, Ecuador believes it would be very useful for a working group of the Sixth Committee to continue to consider this item, with a view to the eventual adoption of the protocol by the General Assembly.

JAMAICA

[Original: English]

[9 May 1991]

1. The importance of the task of the General Assembly to encourage the development and codification of international law is undisputed. The element of rigidity associated with regulation by convention, must, however, be guarded against, particularly when dealing with matters adequately governed by custom and usage. It is, therefore, important to recognize, as alluded to in paragraph 2 of the explanatory memorandum, that the proposed additional protocol is not an attempt "to regulate every detail" and that the rules of customary international law should continue to govern matters not expressly dealt with in the additional protocol.

Article 1

2. This article is acceptable.

Article 2

3. The additional rights conferred on consular officers are generally acceptable. With respect to subparagraph (a), however, it is proposed that the word "amend" be substituted for the word "broaden", as the latter term seems rather imprecise in the context of the issuing of passports and other travel documents.

4. Subparagraph (b) which provides for the right of consular officers to issue visas, should be amended to include the words "extend, amend or revoke" following the words "To issue". That amendment would extend the powers of the consular officer, instead of restricting them simply to the issuance of visas.

Article 3

5. Paragraph 1 (a) should be amended to include after the word "domiciled" the words "resident or visiting".

6. In paragraph 1 (c), which provides for the right of consular officers to register births and deaths of nationals of the sending States, the word "nations" should be amended to read "nationals".

Article 4

7. This article provides for the right of consular officers to draw up or authenticate certain legal acts and contracts, including those relating to property and testamentary dispositions. It seeks to give consular officers the right to carry out the several functions listed thereunder without regard to a request from or the consent of the nationals of the sending State or Parties referred to in subparagraph (a).

8. It is proposed, therefore, that in subparagraph (a) the words "at the request of or with the consent of the parties" be inserted following the word "contracts" in line 3.

Article 5

9. Paragraph 1 (b) provides for the right of consular officers to accept from the authorities of the receiving State articles lost by nationals of the sending State during their sojourn in the receiving State. That provision suggests that only articles which were lost by nationals of the sending State, while the said nationals were inside the receiving State, are covered under this article.

10. That provision should be made more flexible, notwithstanding article 13, which provides for notification of consular officers where articles which are the property of nationals of the sending State are found on or near the coast of the receiving State to include any article lost by nationals of the sending State which came into the possession of the authorities of the receiving State, for example by way of road, rail, air, sea or other modes of transport.

Articles 6, 7 and 8

11. These articles are acceptable.

Article 9

12. This article provides that the right of consular officers to respect nationals of the sending State before tribunals of the receiving State shall cease upon the appointment of representatives by the person represented.

13. That provision should be amended to include the continuance of the right at the request of the person represented.

14. It is proposed, therefore, that the following words be added at the end of the article: "except where the persons represented request or consent to the continuance of the rights referred to in article 5 (i) of the Convention."

Articles 10, 11 and 12

15. These articles are acceptable.

Article 13

16. Paragraph 1 provides for the notification of the consular post where any vessel of the sending State is wrecked or where articles which are the property of nationals of the sending State are found on or near the coast of the receiving State. This provision should be amended to include articles found in the territorial waters of the receiving State.

17. It is proposed that after the words "receiving State" in line 4 the following words should be added "or in its territorial waters".

Article 14

18. This article is acceptable.

Article 15

19. Paragraph 1 provides for the notification of the consular post of the arrest, detention, etc., of a national of the sending State within five days of such arrest, etc.,

20. Having reagrd to the fact that the person detained, arrested, etc., may be without representation during a period of deprivation of a fundamental right, five days is too long a time for communication of the detention, arrest, etc., to a consular post, as provided for in paragraph 1. The time-frame provided for should be reduced to three days.

21. Paragraph 3 provides for a maximum time-frame of one week from the date of detention, arrest, etc., within which a consular officer must be given the

right to visit the arrested national to assist in obtaining legal representation. The time-frame in that respect is also too long and should be reduced to five days.

Articles 16, 17, 18, 19, 20, 21 and 22

22. These articles are acceptable.

LUXEMBOURG

[On behalf of the Twelve States members of the European Community]

[Original: English]

[13 June 1991]

1. The Twelve have taken note with interest of the proposal by the Federal Minister for Foreign Affairs of the Republic of Austria and the Minister for Foreign Affairs of the Czech and Slovak Federal Republic concerning the elaboration of an additional protocol on consular functions to the Vienna Convention on Consular Relations (A/45/141). The Twelve firmly believe that the Vienna Convention on Consular Relations contributes to the friendly relations among nations and plays an essential role in creating favourable conditions for the activities of consular posts and for the conduct of consular relations. This Convention contains only one article on consular functions.

2. Article 5 lists twelve consular functions and declares in article 5 (m) that consular officers may also perform any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State. The proposed additional protocol seeks to develop and specify to a certain extent the functions listed in article 5 and to elaborate on the remainder referred to in article 5 (m).

3. Many States Parties to the Vienna Convention, including the Twelve, have also concluded a number of bilateral consular agreements that describe in more detail the functions listed in the Convention and sometimes also other functions. States that have a network of bilateral consular agreements might have no particular need for a new multilateral instrument on consular functions. However, the Twelve are well aware that not every State Party to the Vienna Convention has such a network of bilateral consular agreements, and that for this reason some States may see advantages in an additional protocol on consular functions. The advantages of uniformity would however have to be weighed against a possible limitation on the freedom to negotiate with other States on a bilateral basis, as was pointed out by the Permanent Representative of Italy in his statement on behalf of the Twelve in the Sixth Committee on 22 October 1990.

4. With respect to the procedure to be followed in considering the item entitled "Additional protocol on consular functions to the Vienna Convention on Consular Relations" at the forty-sixth session of the General Assembly, the Twelve submit that careful consideration of the advantages to be reaped by an additional protocol and of the possibilities of success in negotiating it is called for, taking into account also the problems of harmonization of domestic legislation. In this respect, the Twelve are of the opinion that the above consideration should be completed as soon as possible, in order to render possible the adoption of a final decision on the matter at the forty-seventh session of the General Assembly.

MEXICO

[Original: Spanish]

[5 July 1991]

1. The Mexican Government is flexible as regards the procedure to be adopted in considering this matter.

2. With regard to the views expressed on the content of the proposal of Austria and Czechoslovakia, which is a useful effort to develop the codification of consular rights, the Government of Mexico finds areas to which it attaches special importance and to which it will be interested in contributing, in due course, on the lines of the preliminary terms expressed in the annex hereto. Moreover, provisions have been found which cut across the boundaries of national practice and legislation, the compatibility, or possibly the deletion, of which it would be useful to negotiate.

Annex

COMMENTS OF THE GOVERNMENT OF THE UNITED MEXICAN STATES ON THE DRAFT ADDITIONAL PROTOCOL CONCERNING THE CONSULAR FUNCTIONS OF THE VIENNA CONVENTION ON CONSULAR RELATIONS

First of all it would be advisable to bring the terminology used in the Spanish translation of the draft in question into line with the terminology used in the Vienna Convention on Consular Relations as regards the definition of "sending State", "receiving State" and "consular district".

It would be advisable for the text of the draft protocol to refer to the obligation of the receiving State to facilitate consular functions instead of just stating the duties of consular officials.

Our comments on the articles are as follows:

Article 2.(b). Our national legislation does not authorize the issuing of return visas as a consular function.

Article 3.1.(c) should include among its registrations the registration of marriages of nationals abroad.

Article 3.1.(d). The function of authenticating documents exceeds the limit of the rights assigned thereto in our legislation which is restricted to issuing the legalization of documents issued by the receiving State.

Article 3.1.(e) and (f). These subparagraphs exceed the limit of our practice and legislation for which there are reservations, and it would be advisable to analyse the suitability of retaining them.

Article 4.(b). We wish to comment that our legislation provides for the consular function that permits foreigners with property in Mexico to make testamentory dispositions in the Mexican consulates situated in the receiving State.

Article 7. We recommend reformulation of the obligation of the receiving State to facilitate consular functions concerning the recovery of property arising from estates, pensions, compensations, workmen's benefits, etc., pertaining to nationals of the sending State and which have not been claimed personally in the receiving State, all of which is consistent with the 1963 Vienna Convention on Consular Relations and, for Mexico, is in keeping with article 9, paragraph 2, of the Consular Convention signed with the United States of America.

We consider it important to establish the obligation of the authorities of the receiving State to inform the consular officials without delay of the existence of procedures affecting the interests of nationals of the sending State, especially in the case of minors lacking legal capacity or absent, and that the consular officials are informed of the existence of judicial proceedings where experts are called in to testify on the basis of the national law of the sending State.

Article 12.1. We have a certain reservation concerning the concept of "urgent cases", because of its ambiguity. We suggest that the three last lines of this paragraph should be deleted.

Article 15. We recognize the importance of this article for improving the legal purview of the consular function as regards the protection of nationals, but it would be useful, inter alia:

(a) To reduce the period of five days, prescribed in paragraph 1, to 24 hours;

(b) To include, in paragraph 1, the obligation of the receiving State to inform the consular officials of the restriction of personal freedom of a national of the sending State, even in the case of an administrative offence and not just in criminal cases;

(c) To establish, in paragraph 1, the obligation, as in paragraph 3, to state in clear terms the objection of the national to informing the consular officer of his State of origin;

(d) To ensure that paragraph 2 refers to the inviolability of the official correspondence of a consular office, by means of a reference to article 35, paragraph 2, of the 1963 Vienna Convention;

(e) To ensure that paragraph 3 establishes the obligation of the receiving State to facilitate the work of consular officials in assisting nationals of the sending State who are deprived of personal freedom for a period not exceeding 48 hours, thereby replacing the present period of one week proposed in the draft.

MONGOLIA

[Original: English]

[7 May 1991]

1. Mongolia attaches due importance to the Vienna Convention on Consular Relations of 1963. It marked an important contribution to the progressive development and codification of international law and has been instrumental in attaining uniformity of consular law and practice.

2. In the same vein, the Government of the Mongolian People's Republic finds expedient and useful the proposal put forward by Austria and Czechoslovakia to adopt an additional protocol to supplement the Vienna Convention primarily in the area of consular functions by multilaterally endorsed norms.

3. In the view of the Mongolian Government, the adoption of such an instrument would be timely and of important service in meeting the new requirements of the unprecedented expansion of political, economic and cultural relations, human exchange and migration in the wake of the steady improvement of the world political climate. We would think that in the process of the elaboration of such a document, norms regulating consular activities and functions would be further enriched to benefit States in the legal and practical matters for upholding and protecting human rights and interests in consular relations.

4. Mongolia considers that the draft additional protocol prepared by Austria and Czechoslovakia, which gives quite a comprehensive listing of consular functions, can provide a good point of departure for future work. It would be desirable to consider the inclusion in the proposed additional protocol of provisions envisaging the possibility for consular officers to publish in the press of the receiving State notices for the attention of their nationals, also to take a census of their nationals and for these purposes to request the cooperation of the competent authorities of the receiving State.

5. Mongolia supports the view that the draft additional protocol should be considered by a working group of the Sixth Committee.

NORWAY

[on behalf of the Nordic countries]

[Original: English]

[30 June 1991]

1. The Nordic countries are committed to the progressive development of international law. Therefore, they appreciate the efforts undertaken by Austria and Czechoslovakia to elaborate and supplement the provisions of the Vienna Convention on Consular Relations as regards consular functions.

2. The idea of elaborating on the consular functions mentioned in article 5 of the Vienna Convention is an ambitious undertaking which the Nordic countries have considered with interest. In this connection, one has to bear in mind that article 5 was the subject of a prolonged debate in the International Law Commission during its preparatory work on a draft convention. Extensive discussions on the contents of the article took place during the diplomatic conference where the text of the Convention was finalized. The result was a paragraph by paragraph enumeration of the most common and most important consular functions, including a final paragraph of a more general nature, implying that the enumeration was not intended to be exhaustive. In the opinion of the Nordic countries, experience from the nearly 30 years that have passed since the adoption of the Convention indicates that the solution agreed upon in 1963 was both rational and viable.

3. Moreover, past experience reflects the difficulties involved in establishing precise rules regarding consular functions in a regional area. The European Convention on Consular Functions of 1967, which has still not entered into force due to an insufficient number of ratifications, is an illustrative example. This calls for special caution if efforts are made to reach a similar agreement on a global level. Against this background, the Nordic countries are not convinced that comprehensive, detailed provisions on consular functions represent an adequate and suitable vehicle for global solutions. In the past, States have supplemented the Vienna Convention with such provisions, where deemed necessary, through bilateral agreements. This still represents a feasible and flexible alternative to a comprehensive approach.

4. In view of the inherent difficulties facing attempts to arrive at precise rules on consular functions at a global level, and considering the many questions raised by the text of the present proposal, the Nordic countries are of the opinion that Member States need more time to study the proposal.

ROMANIA

[Original: French]

[18 July 1991]

1. Romania understands the intent of the proposals contained in the protocol to be to expand important aspects of the consular function by suggesting solutions to matters not dealt with in the Vienna Convention on Consular Relations of 24 April 1963.

2. The solutions proposed in the protocol are in accordance with States' bilateral practice, with the principles of international law and with other rules laid down in international multilateral conventions. However, it would be desirable to make certain changes to the wording of some of the articles proposed in the Protocol.

3. In article 3, the capacity to authenticate documents destined for use in the sending State or by nationals of the sending State should be expanded. In article 3, paragraph (d), it should be specified that the consular officer shall have the right to authenticate, at the request of the parties concerned, documents issued or signed by the competent authorities of the receiving State, as well as documents issued or signed by diplomatic or consular officers in the same district and intended for use in the sending State or by nationals of that State.

4. Article 6 should be recast to take account of the principle that the administration of justice is a prerogative of sovereign States and cannot be delegated to foreign authorities. Consequently, article 6 (e) should state that in the exercise of the functions referred to in article 5 (j) of the Convention, consular officers may transmit judicial documents and execute applications for legal assistance in civil cases only for nationals of the sending State in conformity with valid international agreements or, if such agreements do not exist, in accordance with the laws and regulations of the receiving State. In that way, the officers' capacity to execute applications for legal assistance and to transmit judicial documents would be limited to nationals of the sending State.

5. In article 7 of the protocol, the provisions of the Hague Convention relating to the guardianship of minors should be reflected. The wording of the article should take account of the principle that the guardianship of minors is subject to national law. It should therefore be stipulated that after receiving information on the setting up of a guardianship for a minor or a trusteeship for an incompetent or absent person, the consular officer may ask for a review of the measure taken if it is not in accordance with national law on minors or absent persons. The institution of guardianships or trusteeships for nationals of a receiving State not domiciled in a sending State would be allowed only at the request of the consular officer.

6. In article 12, there should also be some mention of the case where the authorities of the receiving State take urgent measures on board a civilian vessel flying the flag of the sending State and where the consular officer, though he has been informed, has not been able to be present when the urgent measure is carried out.

7. In article 15, any objection made by a person who has been taken into preventive detention or arrested to notification of the consular post of the sending State should always be expressly stated. Accordingly, the last part of the first sentence of paragraph 1 of article 15 should be recast to specify that the consular post of the sending State shall be notified "if the person concerned does not expressly object to the notification".

SWITZERLAND

[Original: French]

[19 July 1991]

1. It is not Switzerland's usual practice to conclude bilateral agreements in the consular field. It has always preferred to rely on the Vienna Convention on Consular Relations of 24 April 1963, which is to a large extent an expression of customary law on the subject. This is also the reason why our country has not signed or ratified the European Convention on Consular Functions.

2. The competent Swiss federal authorities consider that article 5 of the Convention on Consular Relations, which sets forth consular functions, constitutes sufficient basis for defining the tasks of consular officers, whether from the standpoint of the sending or the receiving State. It follows that, in the Swiss Government's opinion, there is no urgent need to conclude a convention on consular functions. Nevertheless, Switzerland would not refuse to participate actively in the process of drafting and adopting an international instrument, which should take place in the context of a diplomatic conference convened by the United Nations in accordance with the principle of universality.

3. Bearing in mind its position of principle, set forth in the preceding paragraph, the Swiss Government would like to comment on certain provisions of the draft protocol. This does not mean that the articles on which it does not comment could be accepted in their current form.

4. Article 1, paragraph 2: In general, Swiss consular officers give priority to protecting the interests of individuals and, more exceptionally, those of legal persons. Therefore, the aforementioned paragraph, which provides that the protocol shall apply, mutatis mutandis, to legal persons, is not acceptable to Switzerland in its current form.

5. Article 4: Swiss consular officers are not authorized to perform notarial functions. Likewise, Switzerland does not allow notarized acts to be executed in its territory by consular officers of the sending State, to the extent that the execution of such acts is within the sole competence of the Swiss authorities.

6. However, should it be considered appropriate to establish minimum rules in this area, article 4 would have to be reviewed, given its very broad scope. It effectively allows consular officers to execute almost all legal acts, as long as they concern relations between nationals of the sending State. Such powers, which are based on a broad conception of the ties which connect nationals of the sending State with their State of origin, do not appear consistent with the evolution of law.

7. Article 6: The practice of referring to the laws and regulations of the receiving State should not be limited solely to legal assistance in civil cases, as provided in paragraph (e) of this article, but should also apply to all the functions described in this provision, since the translation of documents or the hearing of declarations may give rise to a request for legal assistance in civil cases.

8. It should be noted that in Switzerland, legal assistance documents fall exclusively within the competence of the Swiss authorities.

9. Articles 10 to 13: Switzerland is in favour of these provisions, which, for the most part, reflect a well-established practice. As a land-locked country, it is anxious that its consular officers should have free access at all times to vessels flying the Swiss flag.

10. Article 14: This article, which provides that articles 10 to 13 shall apply, mutatis mutandis, to civil aircraft of the sending State, does not specify whether it refers to State aircraft or to all aircraft registered in the sending State. The Swiss authorities know of very few cases where consular officers have asked to visit aircraft of their national airline.

11. As currently drafted, article 12 cannot, in any case, be applied to aircraft. The obligation to notify the consular officer of coercive measures, and even to require his presence, could seriously hinder the imposition of such measures or the flow of air traffic, in view of the very short time in which aircraft pass over airports.

12. Article 15: This provision is drafted in such a way as to imply that the consular officer has an almost absolute right to visit a detained national of his State. While the exercise of this right remains subject to the agreement of the person concerned, the provision omits any reference to the laws and regulations of the receiving State, in contrast to article 36, paragraph 2, of the Vienna Convention on Consular Relations. This omission does not seem appropriate.

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]

[2 August 1991]

1. We received with interest the document submitted by Austria and Czechoslovakia containing a request for the inclusion in the provisional agenda of the forty-fifth session of the General Assembly of an additional item entitled "Additional protocol on consular functions to the Vienna Convention on Consular Relations". The Vienna Convention of 1963 was a timely and important legal instrument for regulating the complex field of consular law; as its practical application has shown, the adoption of the Convention has facilitated the effective solution of many problems connected with the activities of consular missions.

2. We regard the draft additional protocol on consular functions submitted by Austria and Czechoslovakia as being intended to promote the clarification and uniform interpretation of the consular functions defined in general terms in the 1963 Convention, which in future could facilitate the application of the articles of the Convention and the work of consular posts as a whole.

3. In supporting this proposal, we consider it essential that it be carefully studied by the Sixth Committee of the General Assembly, thus enabling a community of views on the subject to emerge and mutually acceptable solutions to be found.

4. As far as the draft text itself is concerned, there should be more detailed regulation of the question of the freedom of the consul's relations with nationals of the sending State, including the consul's right to a mandatory meeting with his nationals. With reference to article 15, paragraph 1, of the draft, we consider the five-day period for notifying the consular post of the preventive detention, arrest or other restriction of the personal freedom of a national of the sending State to be too long.

5. We also take the view that the draft protocol should include a provision on the obligation of the consul to issue visas within fixed or shorter time-limits.

6. The Soviet delegation intends to make known its views and comments, article by article, in the course of further work on the draft text in the Sixth Committee of the General Assembly.

URUGUAY

[Original: Spanish]

[7 May 1991]

1. As the delegation of Uruguay has stated within the Sixth Committee, the consideration and subsequent adoption of an instrument concerning the characteristics of the additional protocol to the Vienna Convention on Consular Relations can be useful in order to complement the Convention, to which our country is a party. For this reason, Uruguay supported the inclusion of the item in the agenda.

2. We would like to point out the following with regard to the procedural aspects:

Discussions on the draft text submitted should be held within an open informal working group or, failing that, should be the subject of open informal consultations which would enable all delegations interested in discussing the matter to participate.

The group or the informal consultations should be chaired by one of the representatives of the delegations that submit the draft text.

The objective of the group or consultations at the forty-sixth session should be the elaboration of standards or criteria which are accepted by States and relate to the final text to be considered by the Sixth Committee.

These standards or general guidelines, which must be precise and exact and take into consideration the original text submitted by the sponsors, should accompany the draft text during the final stage of elaboration, when a working group (at this point, a formal group) or possibly the International Law Commission will elaborate a draft that has the political support of Member States and can be speedily adopted by the General Assembly.

3. The Sixth Committee could thus deal with the question in two or three sessions, and a text could be definitely adopted which would have real applicability and should, if the text is accepted by a wide majority of States, have a large number of ratifications.

4. In this way, we would be acting in accordance with the new guidelines on relations between the various bodies of the United Nations system and giving concrete support to the draft text in its final stages of consideration.

ZIMBABWE

[Original: English]

[8 August 1991]

Although Zimbabwe is not yet party to the Vienna Convention on Consular Relations, the possibility of its accession to the Convention is currently under review. The Permanent Mission would nevertheless like to give Zimbabwe's views as follows:

(a) The additional protocol is welcome as it seeks to codify the already recognized rights and duties of consular officials;

(b) The protocol does not create new principles or deviate from the original and current spirit of the Vienna Convention on Consular Relations;

(c) The additional protocol does not violate the provisions of the Vienna Convention on Consular Relations in any way, since article 73 (2) thereof provides that:

> "nothing in the present convention shall preclude states from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof."

(d) In general, the privileges of consular officers under customary international law are less settled and concrete than those of diplomatic envoys, hence the submission that bilateral agreements cannot be considered as a substitute for a universal convention is a valid one;

(e) The reason is that State parties to the Vienna Convention on Consular Relations must not be seen to be concluding bilateral agreements which differ in content and are only in force between certain countries, thus negating the original idea of a universal convention.

UNITED NATIONS

A

General Assembly

Distr.
GENERAL

A/46/348/Add.1
1 October 1991
ENGLISH
ORIGINAL: ENGLISH/RUSSIAN

Forty-sixth session
Agenda item 133

ADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION ON CONSULAR RELATIONS

Report of the Secretary-General

Addendum

CONTENTS

	Page
REPLIES RECEIVED FROM MEMBER STATES AND OTHER STATES PARTIES TO THE CONVENTION	2
Philippines	2
Ukraine	2

PHILIPPINES

[Original: English]

[3 July 1991]

1. The Philippines welcomes the initiative of Austria and Czechoslovakia in submitting the draft Additional Protocol, with the objective of more specifically and precisely defining the consular functions authorized by the Convention.

2. Within this context, the Philippines supports the general tenor of the draft of the Additional Protocol.

UKRAINE

[Original: Russian]

1. Ukraine received with interest the proposal by Austria and Czechoslovakia concerning the elaboration of an additional protocol on consular functions to the Vienna Convention on Consular Relations of 1963. It represents a useful effort in the codification and progressive development of international law. At this time, when Ukraine is actively engaged in establishing direct consular relations with neighbouring and other States on the basis of its Independence Act of 24 August 1991, it will give very close attention to the elaboration of the draft additional protocol.

2. The Vienna Convention on Consular Relations does not contain an exhaustive list of specific consular functions. Article 73 of the Convention provides for the possibility of filling this lacuna in the law by means of bilateral consular agreements and the rules of customary international law. At the same time, it would seem advisable to study closely the question of the possible effectiveness of using a universal method to regulate problems which are not encompassed by the 1963 Convention, rather than by concluding bilateral agreements. The idea of the additional protocol is also important as a means of reducing recourse to customary law, which gives rise to complications. The additional protocol can also be viewed in the light of its usefulness as a general point of departure for States which do not have diplomatic, consular or trade relations.

3. The wording of the draft additional protocol takes into account the provisions of agreements and practices which affect consular functions. This is a point in its favour. Another positive feature is that its authors did not undertake to codify the entire range of international practice in the field of consular functions. The draft protocol affirms that customary international law should continue to govern questions not expressly regulated in its articles.

4. Certain provisions in the proposed document could enhance existing international practice. In particular, it appears that article 15, paragraph 1, of the draft has been more aptly formulated than article 35, paragraph 1 (b), of the Vienna Convention on Consular Relations. It contains at least two considerably improved provisions. The first of these concerns the notification of the arrest or other restriction of the personal freedom of a national. While the Convention provides for notification in the event that such a national should require it, under the protocol notification shall take place if the person concerned does not object against such notification. The second improvement in the paragraph in question is that it establishes a time-frame for the giving of notification. A period of, for example, four days should have been set for this. The draft could be supplemented with certain new provisions. In particular, it could indicate the powers of a consul with regard to matters of inheritance; it could regulate in greater detail the question of the freedom of communication between a consul and the nationals of the State he represents, including the consul's right to a mandatory meeting with his nationals, and it could include a provision on his obligation to issue visas within fixed, preferably shorter, time-limits.

5. At the same time it is important that the additonal protocol should not contain any provisions which would be prejudicial to the rights and obligations deriving from agreements already concluded between States and should not impede the conclusion of new agreements under international law.

UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/46/348/Add.2
25 November 1991

ORIGINAL: ENGLISH

Forty-sixth session
Agenda item 133

ADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION ON CONSULAR RELATIONS

Report of the Secretary-General

Addendum

CONTENTS

Page

II. REPLIES RECEIVED FROM MEMBER STATES AND OTHER STATES PARTIES TO THE CONVENTION

Japan 2

JAPAN

[Original: English]

1. The Government of Japan very much appreciates the efforts of the Governments of Austria and Czechoslovakia in making the detailed proposal regarding the additional protocol as a contribution to the progressive development and codification of international law.

2. At the same time, Japan is of the view that the additional protocol, including the question as to the need for such a document, should be thoroughly examined in the Sixth Committee through the exchange of views of Member States. Japan, for its part, intends to participate in that effort.

3. In the light of the above, Japan believes that the following points require study:

(a) The purpose of and need for the protocol:

(i) Reasons why the additional protocol is needed:

a. The fact that there are now more than 200 bilateral treaties regarding consular functions suggests that the rules in article 5 on consular functions of the Vienna Convention are inadequate;

b. In view of the fact that such bilateral agreements are common among like-minded developed countries, but rare among developing countries, and that small developing countries in particular experience difficulties because there are no treaty rules that they can apply to consular functions, do the realities of consular functions in developing countries in fact require this additional protocol?

(ii) Conformity between the additional protocol and the more than 200 bilateral agreements already existing. (Considering the various legislative differences among countries, is it possible to devise an additional protocol that is both specific and generally applicable? Also, if, for example, the substance of the additional protocol does not affect the rules already laid down in the existing bilateral treaties, can it really be effective?)

(iii) According to the explanatory memorandum prepared by Austria and Czechoslovakia, the draft of the additional protocol enumerating consular functions is not exhaustive and those functions not dealt with should continue to be determined by the law of custom. Thus the additional protocol as formulated does not represent a fundamental change from the regulations as contained in article 5 of the Vienna Convention; can it therefore be expected to clarify fully consular functions?

(iv) Inherent in the preparation of this additional protocol is there is not a danger, in effect, of charging the receiving country with new duties that were not provided for in the Vienna Convention on Consular Relations, of imposing additional burdens on consulates and ultimately of impeding the functioning of consulates?

(b) Is it in fact the case that inherent in article 5 of the Vienna Convention on Consular Relations there are such shortcomings as a lack of clear rules regarding consular functions? If so, what, specifically, are they? In particular, in the course of the deliberations of the International Law Commission at the drafting stage of that Convention there were extensive discussions as to whether to define consular functions in a general manner or to define them by enumerating them, and it was ultimately decided to define the main functions in comparative detail. Further, similar discussions were conducted in the Conference on Consular Relations that was held for the purpose of preparing that Convention, and the Conference adopted the draft prepared by the International Law Commission, it may therefore be necessary to consider thoroughly why the deliberations concerning the rules of consular functions contained in that Convention took that approach.

4. Japan's comments regarding the specific contents of the draft additional protocol are as follows:

(a) The provisions of the draft additional protocol may be thought of as an attempt to regulate more specifically and apply more clearly article 5 (consular functions) and article 36 (communication and contact with nationals of sending States) of the Vienna Convention on Consular Relations. On the other hand, articles 12 and 15, among others, of the protocol contain elements that may be thought of as imposing additional duties on the receiving State (for example, the duty under article 12 to notify the consulate when it intends to take coercive measures against a foreign vessel and the duty under article 15 to forward promptly any communication from a convict addressed to his or her consulate (art. 36, para. 1 (b), of the present Convention provides for only communications from detained persons awaiting judgement));

(b) Among the rules in the draft additional protocol:

(i) It is provided that consular officers shall fulfil new functions with regard to matters for which, depending on the country, they heretofore have not been responsible (for example, art. 3, para. (d), provides that consular officers shall have the right to "authenticate documents issued by the competent authorities of the receiving State and destined for use in the sending State" (at this time Japanese consular officers do not fulfil this function);

(ii) It is also provided that consular officers be required to be thoroughly apprised of the domestic law within the receiving State (for example, according to the regulations in art. 4, para. (a), should a resident in a foreign country enter into a commercial agreement and present it to the local authorities, a consular

officer, acting as notary, has the right to validate it; in doing so, the officer required to be thoroughly informed of the local registration and other laws);

(iii) There are rules regarding actions that, according to practice widely followed by individual countries until now, consular officers have not been expected to take (for example, according to the regulations under art. 4, para. (c), consular officers can be requested to certify general commercial agreements, something that has been done in countries mainly by a notary public or by the chamber of commerce and industry);

(c) The phrase "consular officers shall have the right to" in articles 3 and 4 is confusing, since the elements it refers to are those which may be considered to be duties of the consular officers;

(d) Inasmuch as the additional protocol is supplementary to the Vienna Convention on Consular Relations, it is necessary to stipulate that only the States party to the Vienna Convention may sign (ratify and accede to) the additional protocol. (The actual provisions of arts. 17-19 of the additional protocol are unclear; for example, the phrase "may become" in art. 17 and art. 19 should be deleted.)

UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/46/348/Add.2*
9 December 1991

ORIGINAL: ENGLISH

Forty-sixth session
Agenda item 133

ADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION ON CONSULAR RELATIONS

Report of the Secretary-General

Addendum

CONTENTS

Page

II. REPLIES RECEIVED FROM MEMBER STATES AND OTHER STATES PARTIES TO THE CONVENTION

Japan 2

---

* Reissued for technical reasons.

JAPAN

[Original: English]

[17 July 1991]

1. The Government of Japan very much appreciates the efforts of the Governments of Austria and Czechoslovakia in making the detailed proposal regarding the additional protocol as a contribution to the progressive development and codification of international law.

2. At the same time, Japan is of the view that the additional protocol, including the question as to the need for such a document, should be thoroughly examined in the Sixth Committee through the exchange of views of Member States. Japan, for its part, intends to participate in that effort.

3. In the light of the above, Japan believes that the following points require study:

(a) The purpose of and need for the protocol:

(i) Reasons why the additional protocol is needed:

a. The fact that there are now more than 200 bilateral treaties regarding consular functions suggests that the rules in article 5 on consular functions of the Vienna Convention are inadequate;

b. In view of the fact that such bilateral agreements are common among like-minded developed countries, but rare among developing countries, and that small developing countries in particular experience difficulties because there are no treaty rules that they can apply to consular functions, do the realities of consular functions in developing countries in fact require this additional protocol?

(ii) Conformity between the additional protocol and the more than 200 bilateral agreements already existing. (Considering the various legislative differences among countries, is it possible to devise an additional protocol that is both specific and generally applicable? Also, if, for example, the substance of the additional protocol does not affect the rules already laid down in the existing bilateral treaties, can it really be effective?)

(iii) According to the explanatory memorandum prepared by Austria and Czechoslovakia, the draft of the additional protocol enumerating consular functions is not exhaustive and those functions not dealt with should continue to be determined by the law of custom. Thus the additional protocol as formulated does not represent a fundamental change from the regulations as contained in article 5 of

the Vienna Convention; can it therefore be expected to clarify fully consular functions?

(iv) Inherent in the preparation of this additional protocol is there not a danger, in effect, of charging the receiving country with new duties that were not provided for in the Vienna Convention on Consular Relations, of imposing additional burdens on consulates and ultimately of impeding the functioning of consulates?

(b) Is it in fact the case that inherent in article 5 of the Vienna Convention on Consular Relations there are such shortcomings as a lack of clear rules regarding consular functions? If so, what, specifically, are they? In particular, in the course of the deliberations of the International Law Commission at the drafting stage of that Convention there were extensive discussions as to whether to define consular functions in a general manner or to define them by enumerating them, and it was ultimately decided to define the main functions in comparative detail. Further, similar discussions were conducted in the Conference on Consular Relations that was held for the purpose of preparing that Convention, and the Conference adopted the draft prepared by the International Law Commission, it may therefore be necessary to consider thoroughly why the deliberations concerning the rules of consular functions contained in that Convention took that approach.

4. Japan's comments regarding the specific contents of the draft additional protocol are as follows:

(a) The provisions of the draft additional protocol may be thought of as an attempt to regulate more specifically and apply more clearly article 5 (consular functions) and article 36 (communication and contact with nationals of sending States) of the Vienna Convention on Consular Relations. On the other hand, articles 12 and 15, among others, of the protocol contain elements that may be thought of as imposing additional duties on the receiving State (for example, the duty under article 12 to notify the consulate when it intends to take coercive measures against a foreign vessel and the duty under article 15 to forward promptly any communication from a convict addressed to his or her consulate (art. 36, para. 1 (b), of the present Convention provides for only communications from detained persons awaiting judgement));

(b) Among the rules in the draft additional protocol:

(i) It is provided that consular officers shall fulfil new functions with regard to matters for which, depending on the country, they heretofore have not been responsible (for example, art. 3, para. (d), provides that consular officers shall have the right to "authenticate documents issued by the competent authorities of the receiving State and destined for use in the sending State" (at this time Japanese consular officers do not fulfil this function);

(ii) It is also provided that consular officers be required to be thoroughly apprised of the domestic law within the receiving State

(for example, according to the regulations in art. 4, para. (a), should a resident in a foreign country enter into a commercial agreement and present it to the local authorities, a consular officer, acting as notary, has the right to validate it; in doing so, the officer is required to be thoroughly informed of the local registration and other laws);

(iii) There are rules regarding actions that, according to practice widely followed by individual countries until now, consular officers have not been expected to take (for example, according to the regulations under art. 4, para. (c), consular officers can be requested to certify general commercial agreements, something that has been done in countries mainly by a notary public or by the chamber of commerce and industry);

(c) The phrase "consular officers shall have the right to" in articles 3 and 4 is confusing, since the elements it refers to are those which may be considered to be duties of the consular officers;

(d) Inasmuch as the additional protocol is supplementary to the Vienna Convention on Consular Relations, it is necessary to stipulate that only the States party to the Vienna Convention may sign (ratify and accede to) the additional protocol. (The actual provisions of arts. 17-19 of the additional protocol are unclear; for example, the phrase "may become" in art. 17 and art. 19 should be deleted.)